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10 February 1976

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MEMORANDUM FOR: The Director

SUBJECT: CIA Comments on Electronic Surveillance
Legislation

I previously expressed my personal views regarding warrantless electronic surveillance in the attached memorandum of September 22 to the Director.

With respect to the proposed bill, I believe that the Executive Branch in general and the CIA in particular ought not resist being brought into the Twentieth Century. The proposed bill represents a recognition that a meaningful balance must be struck between the constitutionally protected privacy of individuals and the responsibility of the President to protect the national security. Balancing such as this has been taking place in the courts for the last ten years and one can anticipate future opinions of the Supreme Court supporting the need for balance and rejecting "absolutist" claims of the Executive Branch.

It is an open secret that our Government conducts surveillance of foreign embassies and diplomats in this country. Aside from the international law issues raised by the 1961 Vienna Convention on Diplomatic Relations, there still remain constitutional issues with respect to the propriety of such activities absent a warrant. For example in the Case of Col. Abel, the Supreme Court recognized that even a "spy" has Fourth Amendment rights. I would recommend the Agency's support of such legislation even though it is not involved in domestic electronic surveillance. The Agency will share the brunt of adverse judicial and public criticism of such a warrantless practice if legislation is not enacted. What is bad for the gathering of foreign intelligence domestically is bad for the CIA.

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I know that John Warner's views are to the contrary regarding such proposed legislation. If you find yourself in an impasse between the competing arguments regarding the legislation you may wish to take the middle ground and decline any comment since it does not relate to any activities in which we are substantially engaged. The caveat in the last sentence recognizes that we could be involved in electronic surveillance of Americans abroad, and consequently fall under such legislation. My understanding is that in the last ten years such has not been the case [redacted]

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Special Counsel to the Director

cc: John Warner